
UNITED STATES DEPARTMENT OF
COMMERCE
NEWS

WASHINGTON, D.C. 20230


BUREAU OF
EXPORT
ADMINISTRATION

FOR IMMEDIATE RELEASE

June 2, 1998

www.bxa.doc.gov

CONTACTS: Susan Hofer

Eugene Cottilli

202-482-2721

**GERMAN SUBSIDIARY OF DELL COMPUTER CORPORATION
SETTLES ANTIBOYCOTT CHARGES**

WASHINGTON -- Assistant Secretary for Export Enforcement F. Amanda **DeBusk** announced that Dell Computer **GmbH** has agreed to pay a \$3,000 civil penalty for two alleged violations of the anti-boycott provisions of the Export **Administration** Regulations. Dell Computer **GmbH** is a German subsidiary of Dell Computer Corporation, an Austin, Texas-based computer systems company.

The Department alleged that Dell Computer **GmbH**, in a transaction involving a sale to Saudi Arabia in 1993, **furnished** information regarding its business relationships with Israel. The Department also alleged that the company failed to report its receipt of the boycott-related request for the information it allegedly furnished.

The company voluntarily disclosed the alleged violations to the Department. While neither admitting nor denying the allegations, the company agreed to pay the civil penalty.

The anti-boycott provisions prohibit U.S. companies and individuals from complying with certain aspects of unsanctioned foreign boycotts against any country friendly to **the** United States that is not, **itself**, the object of any U.S. boycott. Through its Office of Antiboycott Compliance, the Commerce Department investigates alleged violations, provides support in administrative or **criminal** litigation of cases, and prepares cases for settlement.

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 In the Matter of)
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 Case No. 98-3
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 DELL COMPUTER, GmbH)
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The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate an administrative proceeding pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), against Dell Computer, GmbH, ("DCG"), a controlled in fact foreign subsidiary of a domestic concern, based on the allegations set forth in the Proposed Charging Letter, dated April 6, 1998, attached hereto and incorporated herein by this reference;

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), and August 13, 1997, (62 **Fed. Reg.** 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

The Department and DCG having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

The Assistant Secretary for Export Enforcement having approved the terms of the Settlement Agreement:

IT IS THEREFORE ORDERED THAT;

FIRST, a civil penalty in the amount of \$3,000 is assessed against DCG;


SECOND, DCG shall pay to the Department the sum of \$3,000 within thirty days of the date of this Order, as specified in the attached instructions.

THIRD, pursuant to the Debt Collection Act of 1982, as amended (U.S.C.A. §§ 3701-37203 (1983 and Supp. 1997)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, DCG will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, as authorized by Section 11(d) of the Act, the timely payment of the sum of \$3,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to DCG. Accordingly, if DCG should fail to pay the sum of \$3,000 in the manner prescribed by the Order, I will enter an Order under the authority of Section 11(d) of the Act denying all of DCG's export privileges for a period of one year from the date of the entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon DCG.

This Order is effective immediately.


F. Amanda DeBusk
Assistant Secretary for Export Enforcement
Bureau of Export Administration

Entered this 28th day of May, 1998

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The checks should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The checks should be mailed to:

U.S. Department of Commerce
Bureau of Export Administration
Room 6622
14th & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Miriam Cohen

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that DCG may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-37203 (1983 and Supp. 1997)) and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1997)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed DCG is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and DCG will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to DCG in accordance with section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

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In the Matter of)	
)	Case No. <u>98-3</u>
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DELL COMPUTER, GmbH)	
_____)	

SETTLEMENT AGREEMENT

This agreement is made by and between Dell Computer, GmbH, ("DCG"), a controlled in fact foreign subsidiary of a domestic concern, and the United States Department of Commerce ("Department"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the "Act").¹

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

WHEREAS, the Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, has notified DCG of its intention to initiate an administrative proceeding against DCG pursuant to Section 11 (c) of the Act by issuing the Proposed Charging Letter, dated April 6, 1998, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, DCG has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; DCG fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and DCG states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, DCG neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, DCG agrees to be bound by the appropriate Order ("Order") when entered;

NOW, THEREFORE, DCG and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over DCG with respect to the matters alleged in the Proposed Charging Letter.
2. In complete settlement of all matters set forth in the Proposed Charging Letter, DCG will pay to the Department, within 30 days of service upon it of the appropriate Order, when entered, the amount of \$3,000.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2 is hereby made a condition of the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to DCG. Failure to make payment of this amount shall result in the denial of all of DCG's export privileges for a period of one year from the date of entry of the appropriate Order.
4. Subject to the approval of this Settlement Agreement pursuant to paragraph 9 hereof, DCG hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement


Agreement or the appropriate Order, when entered)
including, without limitation, any right to:

- A. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - B. Request a refund of the funds paid by DCG pursuant to this Settlement Agreement and the appropriate Order, when entered; or
 - C. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the appropriate Order, when entered.
5. The Department, upon entry of the appropriate Order, will not subsequently initiate any administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against DCG, with respect to any violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the Regulations arising out of the transactions set forth in the Proposed Charging Letter or any other transaction that was disclosed to or reviewed by the Department in the course of its investigation.

6. DCG understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the appropriate Order, when entered.
7. This Settlement Agreement is for settlement purposes **only**, and does not constitute an admission by DCG that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or referred to in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the appropriate Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against DCG in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the appropriate Order, when entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the appropriate Order.

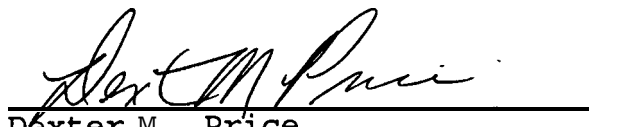
DELL COMPUTER, GmbH



Michael X. Marinelli
Counsel for Dell Computer GmbH

Date: April 27, 1998

U.S. DEPARTMENT OF COMMERCE



Dexter M. Price
Acting Director
Office of Antiboycott Compliance

Date: April 28, 1998



PROPOSED CHARGING LETTER

April 6, 1998

Dell Computer, GmbH
Monzastr. 4
D-6070 Langen
Germany

Re: Case No. 98-3

Gentlemen/Ladies:

We have reason to believe and charge that you, Dell Computer, GmbH, have committed two violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the "**Regulations**"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1997)) (the "**Act**").²

We charge that with intent to comply with, further, or support an unsanctioned foreign boycott, on one occasion you furnished information concerning your or other persons' business relationships with or in a boycotted country or with any business concern organized under the laws of a boycotted country, an activity prohibited by Section 769.2(d) of the former Regulations. We also charge you with one violation of Section 769.6 of the former Regulations in that you failed to report to the Department, within the time required by that Section of the former Regulations, your receipt of a request to engage in a restrictive trade practice or boycott.

¹ The alleged violations occurred during 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that the Bureau of Export Administration alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters in this letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



We allege that:

1. You are a controlled in fact foreign subsidiary of a domestic concern, Dell Computer Corporation. As a controlled in fact foreign subsidiary, as defined in section 760.1(c) of the Regulations, you are a United States person as defined in Section 760.1(b) of the Regulations.
2. During the period June 1992 through August 1993, you engaged in activities involving the sale or transfer of U.S. goods or services, including information, between Germany and Saudi Arabia. Such activities were in the interstate or foreign commerce of the United States, as defined in Section 769.1(d) of the former Regulations.
3. In connection with the activities referred to in paragraph 2 above, on or about June 30, 1992 or July 20, 1992, you shipped goods, including United States origin goods, to one of your customers in Saudi Arabia. You provided the customer with an invoice, numbered 10024198 and dated June 30, 1992 and July 20, 1992.
4. When your invoice, identified in paragraph 3 above, was not paid for over a year, you questioned the Saudi Arabian customer, who verbally requested that you provide a certificate of origin stating that the goods you provided were not of Israeli origin. U.S. Persons are required by the Regulations to report to the Department their receipt of a request to take any action which has the effect of furthering or supporting a restrictive trade practice or unsanctioned foreign boycott.
5. You failed to report within the time required by the Regulations your receipt of the request to engage in a restrictive trade practice or unsanctioned foreign boycott, which was described in paragraph 4 above. By failing to report the request to the Department, as required by Section 769.6 of the former Regulations, you are in violation of Section 769.6. We therefore charge you with one violation of Section 769.6 of the former Regulations.

6. On or about August 11, 1993, you complied with the Saudi Arabian customer's request described in paragraph 4 above, and provided to the customer a certificate of origin containing the following information:

"WE HEREBY DECLARE THAT THE MENTIONED MERCHANDISE IS BEING EXPORTED ON OUR OWN ACCOUNT. THE GOODS ARE NEITHER OF ISRAELI ORIGIN NOR DO THEY CONTAIN ISRAELI MATERIALS NOR ARE THEY BEING EXPORTED FROM ISRAEL."

7. By providing the information quoted in paragraph 6 above, you furnished one (1) item of information about **your**, or other persons', business relationships with or in a boycotted country or with any business concern organized under the laws of a boycotted country, an activity prohibited by Section 769.2(d) of the former Regulations, and not excepted. We therefore charge you with one (1) violation of Section 769.2(d) of the former Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative **sanctions**.³

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel and, under Section 766.18 of the Regulations, to seek a settlement agreement.

As provided in Section 766.3 of the Regulations, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between the Bureau of Export Administration

³ Administrative sanctions may include any or all of the following:

- a. The maximum civil penalty of \$10,000 per violation (see Section 764.3(a) (1) of the Regulations);
- b. Denial of export privileges (see Section 764.3(a) (2) of the Regulations); and/or
- c. Exclusion from practice (see Section 764.3(a) (3) of the Regulations).

and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at the following address:

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Jeffrey E.M. Joyner, Esq.

Mr. Joyner may be contacted by telephone at (202) 482-5311.

Sincerely,

Dexter M. Price
Acting Director
Office of Antiboycott Compliance